

The Senate Select Committee on Presidential Campaign Activities (Watergate Committee) hearings revealed that former White House counsel John Dean had sought from the IRS political information on so-called "enemies." Furthermore, it was disclosed that the White House actually was supplied with information about IRS investigations of Howard Hughes and Charles Rebozo. The Committee noted that tax information and income tax audits were commonly requested by White House staff and supplied by IRS personnel.

The House Judiciary Committee investigating the possible impeachment of President Nixon learned of the apparently unauthorized use of IRS tax data by the President. One of the Articles of Impeachment proposed by the Judiciary Committee alleged that President Nixon had:

endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law.²⁶

Congressional interest in tax return confidentiality also manifested itself in 1974 when, as part of the Privacy Act of 1974, Congress ordered the newly established Privacy Protection Study Commission to report to the President and Congress, and suggest restrictions on the disclosure of federal income tax information. This report, issued on June 9, 1976, recommended major changes in the disclosure of tax data. On June 10, 1976, the Senate Finance Committee issued its report on H.R. 10612, the Tax Reform Act of 1976, in which it, too, proposed substantial revisions in the rules governing tax return confidentiality.²⁷ The Committee's proposal dealt with the same general issues as had the Privacy Protection Study Commission, but it resolved them differently. With few technical changes, the Conference Committee on H.R. 10612 adopted the Senate Finance Committee's version of the tax confidentiality rules as part of the Tax Reform Act of 1976.²⁸

²⁵ Revoking the Authority of the Department of Agriculture To Inspect Income Tax Returns, 39 Fed. Reg. 10881 (Mar. 22, 1974).

²⁶ REPORT ON THE IMPEACHMENT OF RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, H.R. REP. NO. 93-1305, at 3 (1974).

²⁷ S. REP. NO. 94-938 at 315-49, 1976-3 C.B. (Vol. 3) 353-87.

²⁸ Pub. L. No. 94-455, 90 Stat. 1520 (1976).

II. PRINCIPAL AREAS OF REVISION IN THE TAX REFORM ACT OF 1976

A. Congressional Philosophy Behind the 1976 Amendments to I.R.C. § 6103

Congress recognized that the IRS had more information about citizens than any other federal agency and that other agencies routinely sought access to that information. Congress also understood that citizens reasonably expected the IRS would protect the privacy of the tax information they were required to supply.

If the IRS abused that reasonable expectation of privacy, the resulting loss of public confidence could seriously impair the tax system.

Although Congress felt that the flow of tax information should be more tightly regulated, not everyone agreed where the lines should be drawn. The debates on accessibility were most heated in the area of nontax criminal law enforcement. One side, led by Senator Long, sought more liberal access rules in order to fight white collar crime, organized crime, and other violations of the law. This side felt "the Justice Department is part of this Federal Government. It is all one Government." The other side, led by Senator Weicker, wanted very restrictive rules. This side recognized that it was cheaper and easier for Justice to come directly to the IRS, but they also believed that when citizens made out their tax returns, they made them out for the IRS and no one else.

Ultimately, Congress amended section 6103 to provide that tax returns and return information are confidential and are not subject to disclosure, except in the limited situations delineated by the Internal Revenue Code. In each area of authorized disclosure, Congress attempted to balance the particular office or agency's need for the information with the citizen's right to privacy, as well as the impact of the disclosure upon continued compliance with the voluntary tax assessment system.²⁹ In short, Congress undertook direct responsibility for determining the types and manner of permissible disclosures.

B. Structure of Tax Information Confidentiality Provisions

The Tax Reform Act of 1976 created a comprehensive statutory scheme for the disclosure and use of tax returns and return information. The four basic parts to this statutory scheme are:

The general rule of section 6103(a) making tax returns and return information confidential except as expressly authorized in the Code. Definitions of key terms, such as return and return information, are in section 6103(b).

²⁹ *General Explanation of the Tax Reform Act of 1976*, H.R. 10612, Pub. L. No. 94-455 (JCS-33-76),

at 313-16 (J. Comm. Print 1976), 1976-3 C.B. (Vol. 2) 325-28.

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The exceptions to the general rule, detailing permissible disclosures. I.R.C. § 6103(c) – (o).

Technical, administrative, and physical safeguard provisions to prohibit recipients of returns or return information from using or disclosing the information in an unauthorized manner, and accounting, recordkeeping, and reporting requirements that detail the purposes for which certain disclosures were made to assist in congressional oversight. I.R.C. § 6103(p).

Criminal penalties, including a felony for the willful unauthorized disclosure of returns or return information and a civil cause of action for the taxpayer whose information has been inspected or disclosed in a manner not authorized by section 6103. I.R.C. §§ 7213 (criminal penalty for